Quarterly tax developments

Things to know about this quarter's tax developments and related US GAAP accounting implications

Updated through 31 December 2023

In this issue:

Tax developments 2
Other considerations 7
Things we have our eyes on 10
Appendix I: Pillar Two legislation — US GAAP enactment status... 14
Appendix II: FASB issues guidance requiring additional income tax disclosures..................... 17

Welcome to our December 2023 Quarterly tax developments *publication, which focuses on income tax developments that could affect US GAAP accounting. This edition is updated for certain developments identified from 2 December through 31 December 2023. New developments are designated by an asterisk (*) after the state or country name.*

Here we describe certain tax developments previously summarized in Tax Alerts or other EY publications or identified by EY tax professionals or EY foreign member firms. These developments may affect your tax provision or estimated annual effective tax rate.

We compile this information because we recognize that, for many companies, the most challenging aspect of accounting for income taxes is identifying changes in tax law and other events when they occur so the accounting can be reflected in the appropriate period. However, this publication is not a comprehensive list of all changes in tax law and other events that may affect income tax accounting.

We list EY publications that you can access through our ***Tax News Update website****, if you are registered. Anyone interested in registering should contact Amy Herlihy at* ***amy.herlihy@ey.com****.*

See our ***previous editions*** *for additional tax developments.*

Tax developments

Legislation enacted in the fourth quarter for US GAAP purposes

Companies are required to account for the effects of tax law changes on their deferred tax assets and liabilities in the period the legislation is enacted. Similarly, companies must reflect the effects of an enacted change in tax laws or rates in their annual effective tax rate computation in the period the changes are enacted. If an interim change is significant, temporary differences may need to be estimated as of the enactment.

Federal, state and territories

Massachusetts – On 4 October 2023, Massachusetts enacted legislation requiring all industries to use a single sales factor apportionment formula for corporate excise tax purposes. The new legislation also changes how financial institutions source receipts from investment and trading activity for sales factor purposes. These changes take effect 1 January 2025. See **Tax Alert 2023-1655**, dated 5 October 2023.

Wisconsin – On 25 October 2023, Wisconsin enacted legislation specifying which Internal Revenue Code (IRC) updates from 2020 and 2021 will apply for Wisconsin income tax purposes. IRC updates to which Wisconsin will conform include:

- Repealing the election to allocate interest on a worldwide basis
- Treating a partnership's forgiven loan advances as tax-exempt for purposes of IRC Sections 705 and 1366
- Exempting targeted advances of economic injury disaster loans from income tax while allowing deductions for expenses paid with those funds, among other things

IRC updates to which Wisconsin will not conform include:

- Extending the $1 million limitation on deductions for compensation paid to executives of publicly traded corporations to include compensation paid to the eight highest-paid individuals (rather than three highest), plus the chief executive officer and the chief financial officer
- Extending the excess business loss limitation to 31 December 2026 for noncorporate taxpayers
- Extending excess business losses, through 31 December 2028 for noncorporate taxpayers

Effective dates vary by provision. See **Tax Alert 2023-1926**, dated 21 November 2023.

International

Bermuda*[1] – On 27 December 2023, Bermuda enacted legislation introducing a 15% corporate income tax that applies only to Bermuda businesses that are part of multinational enterprise (MNE) groups with annual revenue of EUR750 million or more. The legislation applies for tax years beginning on or after 1 January 2025.

The new corporate income tax is intended to align with the global minimum tax rules under Pillar Two, so that the tax will mitigate the top-up tax payable to other jurisdictions on profit earned in Bermuda. The tax will also leverage certain key scoping elements and definitions in the global minimum tax rules, such as the definitions of entity, group, MNE group, constituent entity and ultimate parent entity.

Brazil*– On 29 December 2023, Brazil enacted legislation effectively requiring companies to add certain state and local tax incentives to their federal corporate income tax base. Prior law permitted the incentives to be included in the federal corporate tax base, reducing companies' corporate income taxes. With the enactment of Law No. 14,789, companies may claim a tax credit up to 25% of their tax incentives for expansion/modernization projects carried out jointly with a public entity/authority. Other changes include reductions on the calculation basis for interest on net equity paid or credited as a means of remunerating shareholders. The changes are effective 1 January 2024. See **Tax Alert 2024-0153**, dated 9 January 2024.

[1] A Tax Alert has not been published on this development. For discussion of the bill when first proposed, see Tax Alerts **2023-1728**, dated 17 October 2023, and **2023-1941**, dated 22 November 2023.

Costa Rica – On 2 October 2023, Costa Rica enacted legislation changing its foreign-source income exemption regime, which allows it to be removed from the European Union (EU) list of non-cooperative countries in tax matters. (For discussion of that removal, see the Other considerations section of this publication.)

Changes in the new law include:

- Clarifying that income tax applies to income from Costa Rican sources, and that Costa Rican sources are those within the national territory
- Taxing certain foreign-source passive income obtained by entities that belong to a multinational group and lack adequate economic substance
- Outlining the criteria an entity must meet to have adequate economic substance
- Aligning Costa Rica's definition of a permanent establishment (PE) with the PE definition of the Organisation for Economic Co-operation and Development (OECD)

The changes are effective upon enactment. See **Tax Alert 2023-1636**, dated 2 October 2023.

Czech Republic*[2] – On 12 December 2023, the Czech Republic increased its corporate tax rate to 21% from 19%. The change is effective for tax years beginning on or after 1 January 2024.

Ecuador*[3] – On 20 December 2023, Ecuador enacted tax reform legislation exempting new investments in renewable energy projects from income tax for 10 years. Other changes include replacing Special Economic Development Zones with Free Trade Zones, which offer a 0% income tax rate for five years on income earned by a business operating in a Free Trade Zone and a 15% rate for the remainder of the time the business operates in the zone. The changes are effective beginning 1 January 2024.

France*[4] – On 30 December 2023, France enacted legislation expanding its 99% participation exemption to dividends that subsidiaries in either the EU or the European Economic Area (EEA) distribute to a French company that is not part of a French consolidated group but could have been if the election for the French consolidated regime had been made. Both the subsidiaries and the French company must be eligible to form a French consolidated group to claim the exemption, as well as meeting other requirements. The changes apply to fiscal years beginning on or after 1 January 2024.

Other changes include a tax credit equal to 20%, capped at EUR150 million (for all companies within the same group), of certain investments in the "green" industry, such as developing production facilities for batteries, photovoltaic panels, wind turbines and heat pumps. Applicants that receive the credit must commit to operate in France for five years and may not relocate from another EU Member State. Applicants may expect their credit applications to be granted by 31 December 2025.

Hungary[5] – On 30 November 2023, Hungary enacted legislation allowing companies to elect to exempt gains from shares/participations from tax if they did not previously opt into the exemption regime for capital gains by the due date of their 2023 income tax return. Companies must, however, pay 9% income tax on 20% of the positive difference between the shares' fair market value and book value on 31 December 2023.

Other changes include:

- Introducing a new research and development (R&D) credit that is designed to be a qualifying refundable tax credit under Pillar Two
- Introducing the concept of deferred taxation/deferred tax accounting into local accounting rules for Pillar Two purposes

The changes are effective 31 December 2023.

---

[2] A Tax Alert has not been published on this development.

[3] A Tax Alert has not been published on this development. For discussion of the bill's content upon introduction by the president, see **Tax Alert 2023-2008**, dated 6 December 2023.

[4] A Tax Alert has not been published on this development. For discussion of the bill's passage by the French Parliament, see **Tax Alert 2023-2126**, dated 22 December 2023.

[5] A Tax Alert has not been published on this development. For discussion of the bill's content upon introduction to Parliament, see **Tax Alert 2023-1846**, dated 7 November 2023.

Hong Kong* – On 8 December 2023, Hong Kong enacted legislation expanding the scope of disposal gains to cover more asset classes under its foreign-sourced income exemption regime, effective from 1 January 2024. The revised regime also:

- Excludes traders' disposal gains without requiring them to have substantial business activities in Hong Kong
- Allows tax to be deferred following an intra-group transfer if certain conditions are satisfied (e.g., requiring sellers and buyers to be subject to Hong Kong profits tax for two years)
- Uses the nexus ratio to determine the tax-exempt portion of foreign-sourced gain from an intellectual property disposal following a tax-free transfer within an affiliated group

See **Tax Alert 2023-2052**, dated 12 December 2023.

On 15 December 2023,* Hong Kong enacted legislation creating a safe harbor that considers Hong Kong-sourced equity disposal gains derived from 1 January 2024 to be nontaxable capital gains in Hong Kong, provided certain conditions are met. The new law also clarifies certain definitions for determining equity holding conditions and the circumstances in which the safe harbor rules will not apply, such as when an equity interest is classified as "trading stock" or an investee is engaged in a property-trading business. See **Tax Alert 2023-2052**, dated 12 December 2023.

Ireland*[6] – On 18 December 2023, Ireland enacted legislation increasing its refundable R&D tax credit, to 30% of qualifying expenditures, net of grant assistance, from 25%. The change is effective for accounting periods commencing on or after 1 January 2024.

Italy*[7] – On 28 December 2023, Italy enacted legislation simplifying the rules used to attribute the income of a controlled foreign corporation (CFC) to its Italian parent. The change is designed to align Italy's CFC rules with the Pillar Two provisions. Other changes include:

- Introducing a penalty protection regime for hybrid mismatches under the EU's Anti-Tax Avoidance Directive n. 2017/952 (ATAD 2)
- A temporary 50% exemption from income tax and IRAP for income from businesses that move to Italy after operating offshore during the last 24 months (the benefit is subject to recapture if the business relocates, wholly or partially, outside Italy within five or 10 years of the benefit's expiration)
- Tightening the tax residence rules for Italian corporations so that a corporation is considered tax resident in Italy if its place of effective management or day-by-day management is in Italy

The changes are effective 1 January 2024.

On 30 December 2023, Italy*[8] enacted legislation repealing its notional interest deduction for corporations. Other changes include extending its domestic capital gains exemption to EU/EEA entities disposing of stock in Italian entities. The changes, among others, have varying effective dates.

Netherlands*[9] – On 27 December 2023, Netherlands enacted legislation deeming Dutch limited partnerships to be transparent entities for Dutch tax purposes unless they would qualify as a reverse hybrid entity. Comparable foreign partnerships are also deemed to be transparent entities unless the reverse hybrid rules applied. Foreign limited partnerships and foreign legal entities with no Dutch legal equivalent are classified under one of two additional classification methods.

The changes are effective beginning 1 January 2025. A limited look-through rule for the conditional withholding tax on dividends is effective as of 1 January 2024.

---

[6] A Tax Alert has not been published on this development. For discussion of the bill's content upon introduction to Parliament, see **Tax Alert 2023-1713**, dated 13 October 2023.

[7] A Tax Alert on this development is forthcoming. For discussion of the bill's passage by Parliament, see **Tax Alert 2023-2125**, dated 22 December 2023.

[8] A Tax Alert on this development is forthcoming.

[9] A Tax Alert has not been published on the legislation's enactment. For discussion of the bill upon passage by the Dutch Parliament, see **Tax Alert 2023-2098**, dated 19 December 2023.

Norway*[10] – On 19 December 2023, Norway enacted a 25% resource-rent tax on onshore wind power to apply alongside the ordinary corporate income tax. The 25% tax is designed as a cash flow tax with deductions for new investments, losses on the realization of fixed assets, certain operating expenses, property taxes and certain corporate income taxes. Finance expenses, sales and marketing expenses, and voluntary payments to municipalities are not deductible. The changes are effective 1 January 2024.

On 20 December 2023, Norway*[11] enacted legislation extending the income tax liability of foreign entities participating in certain exploration or extraction business activities on the Norwegian continental shelf and in the 200-nautical-mile zones. The new law also covers various types of ship transport, supply services and service activities connected with these exploration-related activities (e.g., transport of personnel and catering activities), as well as activities connected with the construction and maintenance of facilities. The law authorizes the Ministry of Finance to exempt certain types of ship transport from tax liability.

Other changes include:

- Exempting cross-border mergers of mutual funds from tax if certain conditions are met (retroactively effective to the 2023 income tax year)
- Changing the tax base of receivables from mergers and demergers so they do not trigger taxable gains or deductible losses when realized (retroactively effective to tax year 2023)
- Limiting deductions for interest expense on certain related party debt
- Increasing the limit on immediate deductions for non-substantial fixed assets to NOK30,000 from NOK15,000

Unless otherwise indicated, the changes are effective 1 January 2024.

Singapore*[12] – On 29 December 2023, Singapore enacted legislation simplifying the approved royalty incentive. The new law replaces the current approved royalty incentive (ARI) scheme (which links the incentive to individual agreements) with an activity-based ARI. The activity-based ARI covers royalties, technical assistance fees, and contributions to R&D costs payable to nonresident person(s) for purposes of the approved activities. A prerequisite of the incentive is that a tax rate greater than 0% must apply in the income recipient's home country.

Other changes include:

- Extending ARI approvals until 31 December 2028
- Allowing more than one activity to be covered under the ARI
- Authorizing the Minister of Finance to specify different tax incentives (including different concessionary tax rates) for different classes, categories or descriptions of:
  - Approved activities
  - Relevant royalties, fees or contributions for an approved activity
  - Nonresident persons to whom relevant royalties, fees or contributions for an approved activity are payable

The current ARI scheme sunsets effective 31 March 2023, with the new regime taking effect retroactively on 1 April 2023.

---

[10] A Tax Alert has not been published on this development. For discussion of the bill's content upon introduction to Parliament, see **Tax Alert 2023-1725**, dated 16 October 2023.

[11] Id.

[12] A Tax Alert on this development has not been published. For prior discussion of the bill, see **Tax Alert 2023-1812**, dated 31 October 2023.

Slovenia*[13] – On 22 December 2023, Slovenia temporarily increased its corporate income tax to 22% from 19% to raise funds to support areas affected by recent flooding. The increased rate applies to business years beginning after 1 January 2024 through 2028.**South Africa***[14] – On 22 December 2023, South Africa enacted tax incentives for renewable energy, R&D and the Urban Development Zone. It also adjusted the minimum royalty rate for oil and gas companies. Other changes include:

- Codifying the interest deductibility principles
- Limiting the exemption for foreign business establishments (in the application of the foreign-controlled company legislation) to companies whose primary functions are performed in-house and in-country, rather than outsourced
- Refining the provisions relating to unbundling transactions to clarify that any tax paid by the unbundling company on the distribution should be included in the basis of the unbundled shares only
- Refining the participation exemption for income from sales of shares in foreign companies

The changes have varying effective dates.

South Korea* – On 31 December 2023, South Korea enacted legislation extending the effective date of its previously enacted UTPR by one year to 1 January 2025. The legislation also modifies South Korea's previously enacted global minimum tax rules. Those changes include:

- Aligning the South Korea's PE definition with the OECD's PE definition
- Adding a group's head office to the definition of ultimate parent entity, while excluding a sovereign wealth fund held by an ultimate parent company
- Specifying the foreign exchange rate that applies when determining whether a South Korean company meets the EUR750 million threshold for applying the global minimum tax rules
- Adding a new method for calculating top-up taxes when the top-up tax percentage exceeds 15%
- Adding new requirements for recognizing qualified domestic minimum top-up tax (QDMTT) if the OECD's administrative guidance exempts the top-up tax for a parent entity

The changes, among others, have various effective dates. See **Tax Alert 2024-0156**, dated 9 January 2024.

Turkey*[15] – On 28 December 2023, Turkey enacted legislation exempting Turkish companies from tax on 50% of dividends received on foreign stock, provided certain conditions are satisfied.

Other changes include:

- Applying the 20% reduced corporate income tax rate for export-related income obtained by manufacturers or suppliers from certain export-related activities
- Extending to 30 June 2024 the corporation tax exemption for "FX-protected Deposit and Participation Accounts," which was due to expire on 31 December 2023
- Permitting Turkish companies to exempt 80% (rather than 50%) of income from certain services for foreign companies provided all the income is transferred to Turkey by the filing deadline for the corporate tax return

Unless otherwise indicated, the changes are effective upon enactment and apply retroactively to income generated as of 1 January 2023.

---

[13] A Tax Alert has not been published on this development.

[14] A Tax Alert has not been published on this development. For discussion of the draft legislation, see **Tax Alert 2023-1352**, dated 2 August 2023.

[15] A Tax Alert is forthcoming. For discussion of the bill's provisions upon introduction, see **Tax Alert 2023-2016**, dated 8 December 2023.

Other considerations

Court decisions, regulations issued by tax authorities and other events may constitute new information that could trigger a change in judgment in recognition, derecognition or measurement of a tax position. These events also may affect your current or deferred tax accounting.

Federal, state and territories

Federal — In a notice, the Internal Revenue Service (IRS) detailed the requirements that eligible contractors must meet to claim the IRC Section 45L credit for new energy-efficient homes. The credit applies to new energy-efficient residences acquired after 31 December 2022 and before 1 January 2033. See **Tax Alert 2023-1741**, dated 19 October 2023.

In another notice, the IRS outlined guidance on the interaction of the foreign tax credit (FTC) rules and dual consolidated loss (DCL) rules with top-up taxes imposed via an Income Inclusion Rule (IIR) or a QDMTT under the OECD's Global Anti-Base Erosion Model Rules (GloBE Rules). According to the IRS, a QDMTT is generally creditable for FTC purposes, whereas an IIR may or may not be creditable depending on whether the taxpayer's US federal income tax liability may be included in its computation. Additionally, the GloBE rules will not cause the foreign use of a DCL incurred in a pre-GloBE tax year, subject to an anti-abuse provision. Forthcoming regulations will align with this new guidance.

Until further guidance is issued, the notice also extends the temporary relief from the application of FTC creditability regulations described in Notice 2023-55. See **Tax Alert 2023-2082**, dated 15 December 2023.

The IRS issued additional interim guidance (Notice 2024-10) on applying the corporate alternative minimum tax (CAMT) to shareholders of CFCs with respect to covered CFC distributions. The Notice also modifies and clarifies prior guidance on determining the applicable financial statement (AFS) of an affiliated group of corporations filing a consolidated return for any tax year. Taxpayers may rely on the interim guidance in the Notice for covered CFC distributions received on or before the date forthcoming proposed regulations are published. Similarly, taxpayers may rely on the interim guidance in the Notice for determining the required AFS for tax years ending before the date forthcoming proposed regulations are published. See **Breaking Tax News 2023-9012**.

The Tax Court held that corporate income tax applied to revenue that a hotel chain received from its loyalty rewards program. The Court reasoned that the hotel could not exclude the revenue from its income under the trust fund doctrine, as argued by the hotel, because it did not meet the doctrine's requirements. It also concluded that the hotel could not defer paying tax until it incurred costs under its rewards program because it did not qualify under Treas. Reg. Section 1.451-4 for the trading stamp exception to the all events test. See **Tax Alert 2023-1821**, dated 1 November 2023.

A US district court denied a company's dividends-received deduction under IRC Section 245A from an integrated out-from-under transaction. Applying the codified economic substance doctrine under IRC Section 7701(o), the court concluded that certain steps supporting the deduction should be disregarded for tax purposes. See **Tax Alert 2023-1857**, dated 8 November 2023.

California — An appeals court upheld the 2012 voter-approved Proposition 39 (Prop. 39), which mandated the use of a singles sales factor apportionment formula, eliminated the option to use a three factor (property, payroll and sales) formula and allowed certain cable companies to exclude a portion of in-state sales in apportioning their income. In upholding Prop. 39's validity, the court rejected an out-of-state company's refund claim based on the argument that Prop. 39 violated the single-subject rule for ballot initiatives by addressing two unrelated subjects: special treatment for cable companies and creating clean energy jobs. See the **State and Local Tax Weekly for 27 October 2023 and 3 November 2023**.

Colorado — In response to recent litigation, the Department of Revenue repealed regulations that clarified that Colorado's definition of IRC incorporates federal changes on a prospective basis only. **State and Local Tax Weekly for 10 November 2023 and 17 November 2023**.

Mississippi — In a notice, the Department of Revenue (DOR) provided guidance on a law change enacted earlier in the year that permits taxpayers to deduct specified research or experimental expenditures that they paid or incurred during the tax year in their trade or business. Taxpayers may also elect to deduct 100% of those expenditures and/or depreciate them in accordance with IRC Section 174 as it existed on 1 January 2021. The change would apply for tax years beginning after 31 December 2022.

Additionally, taxpayers may claim 100% bonus depreciation for tax years beginning after 31 December 2022 for business assets that are qualified property or qualified improvement property (as defined by IRC Sections 168(k) and 168(e)(6), respectively, as they existed on 1 January 2021) and may deduct the expense during the tax year in which the property was placed in service. Alternatively, taxpayers may elect to claim bonus depreciation and/or depreciate those assets under IRC Section 168.

Taxpayers may also effectively elect to deduct the cost of IRC Section 179 property in the year it was placed in service. See the **State and Local Tax Weekly for 27 October 2023 and 3 November 2023**.

New Jersey — In response to recently enacted corporation business tax reform, the Division of Taxation issued guidance on:

- The state's conformity to IRC Section 1502 (federal consolidated return rules) for combined returns
- Income reporting and accounting methods of non-US corporate members of a combined group
- Net operating losses (NOLs) and combined groups
- General information on the NOL regime for tax years ending on and after 31 July 2019
- Changes to the dividend exclusion and the historic ordering of NOLs, the dividend exclusion itself and the deduction for international banking facilities
- Gross income tax allocation and uniformity with corporation business tax sourcing of business income
- Captive investment companies, captive real estate investment trusts (REITs), captive regulated investment companies and combined groups

Additionally, the Division updated its guidance on included and excluded business entities in the combined group and the minimum tax of a taxpayer that is a member of a combined group. See the **State and Local Tax Weekly for 13 October 2023 and 20 October 2023** and the **State and Local Tax Weekly for 10 November 2023 and 17 November 2023**.

Pennsylvania — In a bulletin, the DOR updated prior guidance on applying the limitation on net loss deductions under IRC Sections 381 and 382 when computing Pennsylvania's corporate net income tax (CNIT). The updated guidance provides a detailed discussion on the appropriate application of IRC Section 382 and how much IRC Section 163(j) carryforward interest can be deducted. See the **State and Local Tax Weekly for 13 October 2023 and 20 October 2023**.

In a separate bulletin, the DOR updated its guidance on the CNIT treatment of IRC Section 163(j) to allow taxpayers to fully deduct current-year separate company interest expenses on their CNIT return if they have an IRC Section 163(j) limitation on their interest expense deduction from an earlier period and participate in a current-year federal consolidated return with no IRC Section 163(j) limitation on current-year interest expenses. These taxpayers may also fully deduct carryforwards of interest expense that was limited and not deductible in prior years under IRC Section 163(j). While expecting exceptions to this policy to be uncommon, the DOR noted that exceptions could arise under other code sections, such as IRC Section 382, or if the current/former year limitation is determined at the partnership level.

The DOR also noted that taxpayers would have to add back carryforwards of related party interest for CNIT purposes in the same year that they deducted their remaining federal interest expenses on their federal pro forma Form 1120. See the **State and Local Tax Weekly for 13 October 2023 and 20 October 2023**.

International

Colombia — The Council of State annulled a 2020 tax ruling that prevented a Colombian company from claiming a foreign tax credit for withholding taxes paid on interest income stemming from a loan to a foreign company. The Council reasoned that the ruling's facts differed from the 2011 case on which the ruling's conclusion was based. See **Tax Alert 2023-1944**, dated 22 November 2023.

European Union — The EU Council added Antigua and Barbuda, Belize, and Seychelles to Annex I of its list of noncooperative jurisdictions for tax purposes, which identifies jurisdictions whose tax policies fail to meet EU standards by the required deadline. It also removed the British Virgin Islands, Costa Rica and the Marshall Islands. There are 16 countries on the Annex I list.

The Council added Costa Rica to Annex II while removing Jordan, Qatar, Montserrat and Thailand. Annex II identifies jurisdictions that are making progress on reforming their tax policies to meet EU standards but remain subject to close monitoring. There are 14 countries on Annex II list. See Tax Alerts **2023-1730**, dated 17 October 2023; **2023-1739**, dated 18 October 2023; and **2023-1755**, dated 20 October 2023.

India — The Supreme Court held that taxpayers cannot invoke the most-favored-nation (MFN) clause in an Indian income tax treaty (the first state) based on more favorable terms with another country (second state) unless the Indian government confirms that the first state is entitled to the beneficial provisions. The Court also held that taxpayers could not invoke the MFN clause if the second state was not an OECD member when the treaty became effective.

The decision overrules prior Indian case law, which permitted taxpayers to invoke the MFN clause even though the second state was not an OECD member when its treaty with India became effective. It is consistent, however, with a 2022 circular requiring notification to the first state of the favorable benefits subsequently granted to the second state before the MFN clause could apply. See **Tax Alert 2023-1776**, dated 25 October 2023.

Mexico — In a presidential decree, the government granted temporary tax benefits to companies engaging in the production, manufacture and export of certain categories of goods. The benefits include:

- Accelerated tax depreciation for investments in new fixed assets acquired from 12 October 2023 through 31 December 2024
- An additional tax deduction for tax years 2023, 2024 and 2025 equivalent to 25% of any increase in workforce training expenses compared to the average training expense for tax years 2020, 2021 and 2022

See **Tax Alert 2023-1711**, dated 13 October 2023.

Things we have our eyes on

National, state and local governments continue to seek to increase their revenues. Companies should continue to monitor developments in this area. Some of these potential tax law changes are summarized here.

Federal, state and territories

Credits for clean vehicles — In proposed regulations and an accompanying revenue procedure, the IRS and Treasury outlined how buyers can transfer clean vehicle credits under IRC Sections 30D (clean vehicles) and 25E (previously-owned vehicles) to eligible dealers at the time of purchase. For vehicles purchased on or after 1 January 2024, eligible dealers would receive advance payment of the credits from the IRS and could give the buyers cash or put the credit toward a down payment. See **Tax Alert 2023-1723**, dated 16 October 2023.

IRC Section 987 foreign currency gain or loss — The IRS and Treasury proposed regulations under IRC Section 987 on determining taxable income or loss and currency gain or loss with respect to a qualified business unit whose functional currency differs from its tax owner. The proposed regulations would limit taxpayers' ability to recognize IRC Section 987 losses from terminations of qualified business units on or after 9 November 2023. They would also permit taxpayers to make simplifying elections to ease compliance burdens but may result in loss deferral and limit the taxpayer's ability to control the timing of IRC Section 987 losses.

The proposed regulations would apply to tax years beginning after 31 December 2024, with a new transition rule that depends on whether and how taxpayers historically complied with IRC Section 987. See **Tax Alert 2023-1898**, dated 15 November 2023.

Investment tax credits — In proposed regulations, the IRS clarified what assets are included in energy property and, therefore, eligible for the IRC Section 48 investment tax credit (ITC) after the Inflation Reduction Act added new technologies, including standalone energy storage, biogas property and microgrid controllers. While the proposed regulations would allow flexibility in grouping energy property into one or more projects, the guidance requires the grouping to be consistent for all matters: begun construction, energy communities, prevailing wage and apprenticeship requirements, etc. See **Tax Alert 2023-1936**, dated 21 November 2023.

US-Taiwan Expedited Double Taxation Relief Act — The Senate Finance Committee unanimously approved a bill that would reduce the tax on US-source interest, royalties and gains paid to or received by a qualified resident of Taiwan to 10% from 30%. Tax on US-source dividends paid to or received by a qualified resident of Taiwan would generally decrease to 15%. A 10% rate would apply for certain owners of at least 10% of the shares of stock in a corporation, subject to limitations. The provisions would only become effective if corresponding tax reductions applied to US residents. See **Tax Alert 2023-1980**, 1 December 2023.

International

Canada — In the Fall Economic statement, the Finance Minister proposed additional details for the clean hydrogen ITC, including new requirements that companies must satisfy to claim the ITC for equipment that converts clean hydrogen into ammonia. Other proposals include:

- Expanding the 30% clean technology ITC and the 15% clean electricity ITC to include systems that generate electricity, heat or both electricity and heat from waste biomass
- Allowing Canadian resident companies to claim the tax exemption for international shipping income

See **Tax Alert 2023-1969**, dated 28 November 2023.

The House of Commons is considering a bill that would limit deductions for net interest expense to 40% of tax earnings before interest, taxes, depreciation and amortization (EBITDA) for tax years beginning on or after 1 October 2023 and 30% of tax EBITDA for tax year 2024 and onward. The bill generally defines tax EBITDA as taxable income before taking interest income and expense, income tax and deductions for depreciation and amortization into account.

Other proposals in this bill include:

- Implementing the new ITC for capital investments in carbon capture, utilization and storage (CCUS), which consists of two components (a cumulative CCUS development tax credit and a CCUS refurbishment tax credit), with accompanying labor requirements that taxpayers must meet to claim the maximum credit rates
- Denying financial institutions deductions for dividends from Canadian company shares that are mark-to-market property unless the shares are taxable preferred shares
- Implementing anti-hybrid mismatch arrangement rules that would generally align with the recommendations in the OECD's Action 2 report under its Base Erosion and Profit Shifting (BEPS) initiative
- Extending the phase-out and expiration dates of the 7.5% rate on eligible income of qualifying manufacturers of zero-emission technology by three years, so the reduced rate will be phased out for tax years beginning in 2032 and the general 15% rate will apply for tax years beginning after 2034, and broadening eligibility for the rate to include certain nuclear manufacturing and processing activities
- Imposing a 2% corporate tax on the net value of share buybacks by Canadian public corporations, similar to the stock buyback measure recently enacted in the US
- Implementing the new tax credit for investment in clean technology equipment, with accompanying labor requirements that taxpayers must meet to claim the maximum credit rate
- Introducing new capital cost allowance classes 59 and 60, which would permit accelerated depreciation rates (100% for class 59 and 30% for class 60) for intangible exploration expenses and development expenses from storing captured carbon
- Expanding the critical mineral exploration tax credit and flow-through share regime to include eligible expenses from exploration and development activities for lithium from brines
- Amending the general anti-avoidance rule (GAAR) by lowering the threshold for considering a transaction to be an avoidance transaction, adding an economic substance test for determining whether abusive tax avoidance exists, introducing a penalty equal to 25% of the tax benefit for undisclosed transactions and extending the normal period for GAAR assessments by three years for undisclosed transactions

See **Tax Alert 2023-2002**, dated 5 December 2023.

Italy — In a draft decree, the Minister of Economy and Finance proposed implementing the Investment Management Exemption regime, which allows eligible foreign investment vehicles and their direct or indirect subsidiaries to qualify for a presumption that they have no Italian PE even though an asset or investment manager, or an advisor operates in Italy on their behalf or for their benefit.

The draft decree defines foreign investment vehicle and outlines the criteria that the investment vehicle must meet to qualify as an independent vehicle. Satisfaction of these requirements, among others, may allow the foreign investment company to qualify for the presumption. See **Tax Alert 2023-1745**, dated 19 November 2023.

In draft guidelines, the Revenue Agency outlined the transfer pricing methods that foreign investment management companies must use to demonstrate that remuneration paid to a related party asset/investment manager, whether an Italian tax resident or the Italian PE of a foreign company, was at arm's length. Satisfaction of the arm's-length requirement may allow the foreign investment company to qualify for a presumption that it does not have a PE in Italy. See **Tax Alert 2023-1819**, dated 1 November 2023.

OECD — The OECD released the text of a Multilateral Convention (MLC) to implement Amount A under Pillar One of its BEPS initiative. The MLC's objective is to create a coordinated agreement on reallocating the profits of in-scope MNEs among market jurisdictions. See **Tax Alert 2023-1802**, dated 30 October 2023.

Subsequently,[16] the OECD announced plans to finalize the Pillar One MLC by the end of March 2024, "with a view to hold[ing] a signing ceremony of the end of June 2024."

Separately, the OECD released the text of a Multilateral Instrument (MLI) on the Subject to Tax Rule (STTR) under Pillar Two of the BEPS 2.0 initiative. Jurisdictions can use this MLI to implement the STTR in all their relevant tax treaties. See **Tax Alert 2023-1698**, dated 12 October 2023.

Regarding Pillar Two,[17] the OECD/G20 Inclusive Framework on BEPS released the third set of Administrative Guidance, which clarifies, among other things, the application of the Transitional Country-by-Country Reporting Safe Harbor and the treatment of hybrid arbitrage arrangements, purchase price accounting adjustments, and the definition of revenues when determining whether an MNE group falls within the GloBE rules. The new Administrative Guidance also outlines:

- How to apply the GloBE rules when a constituent entity's fiscal years or financial and tax years are mismatched
- How to allocate taxes from a blended CFC tax regime when some constituent entities
- A simplified calculations safe harbor for non-material constituent entities

Saudi Arabia – In a draft law, Zakat, Tax and Customs Authority proposed a new income tax to replace Saudi Arabia's existing income tax. Features of the new tax include:

- Exempting certain income from tax and changing the computation of capital gains tax
- Exempting income or losses from mergers or demergers from tax, subject to certain conditions
- Allowing companies to offset 100%, rather than 25%, of taxable profit with approved carry-forward losses in the year following the loss
- Limiting interest deductibility to 30% of taxable profit
- Treating gains from indirect sales of shares in Saudi companies as Saudi-source income
- Treating payments for services performed remotely through electronic means as Saudi-source income
- Adopting the straight-line method of depreciation
- Lowering the threshold for establishing a PE to 30 days within any 12-month period from 183 days within any 12-month period
- Defining "agency PE" so that the term aligns with the definition in the 2021 United Nations Model Tax Convention
- Denying deductions for losses from hedging financial instruments, payments that are made to related parties in preferential tax regimes and are not arm's length, and cash payments that exceed the regulatory limit
- Introducing tax incentives for "green" investments
- Imposing withholding taxes on certain payments made to nonresidents

See Tax Alerts 2023-1861, dated 9 November 2023, and 2023-1877, dated 10 November 2023.

[16] A Tax Alert on this announcement is forthcoming.

[17] A Tax Alert on this guidance is forthcoming.

Slovenia[18] — In a draft bill revising the Corporate Income Tax Act, the government proposed implementing the interest expense provisions in the EU's Anti-Tax Avoidance Directive, which would limit interest expense deductions to 30% of EBITDA or EUR1 million, with no ability to carry unused interest forward. Other changes include:

- Lowering the threshold for establishing a construction PE to six months from 12 months
- Precluding companies from using exemptions for specific activities to avoid PE status by fragmenting their business into several small operations and arguing that each part is merely engaged in preparatory or auxiliary activities
- Treating a foreign company as having an agency PE in Slovenia when a person acting on the company's behalf concludes contracts in the country or takes the lead in concluding contracts that the business does not materially change

The bills will be effective for US GAAP purposes upon publication in the Official Gazette and will become effective the day after publication.

United Kingdom — In his Autumn Statement, the UK Chancellor of the Exchequer proposed the following income tax measures:

- Making permanent a three-year temporary provision that permits immediate capital expensing for firms investing more than £1 million a year on plants and machinery (currently effective for qualifying new plant and machinery purchased from 1 April 2023 until 31 March 2026)
- Modifying the R&D tax credit regime by merging the two existing schemes and introducing a 20% general rate of credit and a notional 19% tax rate for loss-makers
- Extending the expiration date of the tax benefits from Investment Zones by five years until 2031 and announcing five new Investment Zones

Separately, a revised version of Autumn Finance Bill 2023 includes changes to the rules for REITs, including exempting certain investors from rules requiring REIT holdings of 10% or more to be fragmented. See **Tax Alert 2023-1945**, dated 22 November 2023.

[18] A Tax Alert has not been published on the proposal to implement the limitation on interest expense deductions or the proposed increase in the corporate income tax rate. For discussion of the proposed PE changes, see **Tax Alert 2023-1861**, dated 9 November 2023.

Appendix I

Pillar Two legislation – US GAAP enactment status

The following tables report the enactment status under US GAAP of the implementation of Pillar Two legislation in various countries. This information is complete through 31 December 2023.

For up-to-date information on Pillar Two developments, please see our **Pillar Two tracker**, which is updated weekly.

Jurisdiction	IAS 12	QDMTT		
	Local GAAP endorsement	Type of legislation	Enacted for US GAAP	Effective date[19]
Austria	Yes	Final legislation	Yes	1 January 2024
Belgium	Yes	Final legislation	Yes	1 January 2024
Bulgaria	Yes	Final legislation	Yes	1 January 2024
Czech Republic	Yes	Final legislation	Yes	1 January 2024
Denmark	Yes	Final legislation	Yes	1 January 2024
Finland	Yes	Final legislation	Yes	1 January 2024
France	Yes	Final legislation	Yes	1 January 2024
Germany	Yes	Final legislation	Yes	1 January 2024
Hungary	Yes	Final legislation	Yes	1 January 2024
Ireland	Yes	Final legislation	Yes	1 January 2024
Italy	Yes	Final legislation	Yes	1 January 2024
Japan	No	No legislation	Not applicable	Not applicable
Liechtenstein	Yes	Final legislation	Yes	1 January 2024
Luxembourg	Yes	Final legislation	Yes	1 January 2024
Malaysia	Yes	Final legislation	Yes	1 January 2025
Netherlands	Yes	Final legislation	Yes	1 January 2024
Romania	No	Final legislation	Not yet enacted	1 January 2024
Slovakia	Yes	Final legislation	Yes	1 January 2024
Slovenia	Yes	Final legislation	Yes	1 January 2024
South Korea	No	No legislation	Not applicable	Not applicable
Sweden	Yes	Final legislation	Yes	1 January 2024
Switzerland	Yes	Final legislation	Yes	1 January 2024
United Kingdom	Yes	Final legislation	Yes	1 January 2024
Vietnam	No	Final legislation	Yes	1 January 2024

[19] For tax years beginning on or after 31 December 2023

Jurisdiction	IAS 12	IIR		
	Local GAAP endorsement	Type of legislation	Enacted for US GAAP	Effective date Error! Bookmark not defined.
Austria	Yes	Final legislation	Yes	1 January 2024
Belgium	Yes	Final legislation	Yes	1 January 2024
Bulgaria	Yes	Final legislation	Yes	1 January 2024
Czech Republic	Yes	Final legislation	Yes	1 January 2024
Denmark	Yes	Final legislation	Yes	1 January 2024
Finland	Yes	Final legislation	Yes	1 January 2024
France	Yes	Final legislation	Yes	1 January 2024
Germany	Yes	Final legislation	Yes	1 January 2024
Hungary	Yes	Final legislation	Yes	1 January 2024
Ireland	Yes	Final legislation	Yes	1 January 2024
Italy	Yes	Final legislation	Yes	1 January 2024
Japan	No	Final legislation	Yes	1 April 2024
Liechtenstein	Yes	Final legislation	Yes	1 January 2024
Luxembourg	Yes	Final legislation	Yes	1 January 2024
Malaysia	Yes	Final legislation	Yes	1 January 2025
Netherlands	Yes	Final legislation	Yes	1 January 2024
Romania	No	Final legislation	Not yet enacted	1 January 2024
Slovakia	Yes	Final legislation	Yes	1 January 2030
Slovenia	Yes	Final legislation	Yes	1 January 2024
South Korea	Yes	Final legislation	Yes	1 January 2024
Sweden	Yes	Final legislation	Yes	1 January 2024
Switzerland	No	No legislation	No	Not applicable
United Kingdom	Yes	Final legislation	Yes	1 January 2024
Vietnam	No	Final legislation	Yes	1 January 2024

Jurisdiction	IAS 12	UTPR		
	Local GAAP endorsement	Type of legislation	Enacted for US GAAP	Effective date[20]
Austria	Yes	Final legislation	Yes	1 January 2025
Belgium	Yes	Final legislation	Yes	1 January 2025
Bulgaria	Yes	Final legislation	Yes	1 January 2025
Czech Republic	Yes	Final legislation	Yes	1 January 2025
Denmark	Yes	Final legislation	Yes	1 January 2025
Finland	Yes	Final legislation	Yes	1 January 2025
France	Yes	Final legislation	Yes	1 January 2025
Germany	Yes	Final legislation	Yes	1 January 2025
Hungary	Yes	Final legislation	Yes	1 January 2025
Ireland	Yes	Final legislation	Yes	1 January 2025
Italy	Yes	Final legislation	Yes	1 January 2025
Japan	No	No legislation	No	Not applicable
Liechtenstein	Yes	Final legislation	Yes	1 January 2025
Luxembourg	Yes	Final legislation	Yes	1 January 2025
Malaysia	No	No legislation	No	Not applicable
Netherlands	Yes	Final legislation	Yes	1 January 2025
Romania	No	Final legislation	Not yet enacted	1 January 2025
Slovakia	Yes	Final legislation	Yes	1 January 2030
Slovenia	Yes	Final legislation	Yes	1 January 2025
South Korea	Yes	Final legislation	Yes	1 January 2025
Sweden	Yes	Final legislation	Yes	1 January 2025
Switzerland	No	No legislation	No	Not applicable
United Kingdom	No	No legislation	No	Not applicable
Vietnam	No	No legislation	No	Not applicable

Local GAAP endorsement: Whether the jurisdiction has adopted the amendments to International Accounting Standard (IAS) 12, *Income Taxes*, by the International Accounting Standard Board.

Enacted for US GAAP: Legislation is considered enacted when any further procedures in respect to the particular legislation being passed at the time are unable to change the outcome.

Effective date: Date when the relevant rule will enter into effect.

[20] For tax years beginning on or after 31 December 2023

Appendix II

FASB issues guidance requiring additional income tax disclosures

In ASC 740-10-55-231, the Financial Accounting Standards Board (FASB or Board) amended Accounting Standards Codification (ASC) 740, Income Taxes, to enhance the transparency and decision-usefulness of income tax disclosures, particularly in the rate reconciliation table and disclosures about income taxes paid.

The amendments are intended to address investors' requests for income tax disclosures that provide more information to help them better understand an entity's exposure to potential changes in tax laws and the ensuing risks and opportunities and to assess income tax information that affects cash flow forecasts and capital allocation decisions.

The guidance also eliminates certain existing requirements related to uncertain tax positions and unrecognized deferred tax liabilities and replaces the term "public entity" with "public business entity" (PBE) in ASC 740.

For more information on the new guidance, click **here**.

EY | Building a better working world

© 2024 Ernst & Young LLP.
All Rights Reserved.

SCORE No. 21967-231US
(Updated 11 January 2024)

ey.com/ensues/assurance/accountinglink

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via **ey.com/privacy**. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit **ey.com**.

Ernst & Young LLP is a client-serving member firm of Ernst & Young Global Limited operating in the US.

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax or other professional advice. Please refer to your advisors for specific advice.